

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Video Description: Implementation of the)	MB Docket No. 11-43
Twenty-First Century Communications)	
and Video Accessibility Act of 2010)	
)	

**REQUEST OF FOX CORPORATION AND FOX NEWS NETWORK, LLC FOR
EXCLUSION FROM LIST OF TOP FIVE NATIONAL NONBROADCAST NETWORKS
SUBJECT TO AUDIO DESCRIPTION RULES**

Fox Corporation and Fox News Network, LLC (collectively, “Fox”), by counsel, hereby submit this request (“Request”) for the Federal Communications Commission (“FCC” or “Commission”) to exclude Fox News from the list of top five national nonbroadcast networks subject to the Commission’s audio description rules.¹ Fox News qualifies for exclusion from the list of networks subject to the audio description rules because it does not provide, on average, at least 50 hours per quarter of non-exempt prime-time programming (*i.e.*, programming that is not live or near live), as defined by the Commission.

The FCC’s rules require multichannel video programming distributor (“MVPD”) systems that serve 50,000 or more subscribers to provide 87.5 hours of audio description per calendar

¹ See generally 47 C.F.R. § 79.3. Per a recent action by the Commission updating the relevant terminology, this Request refers to the Commission’s “audio description” rules instead of “video description” rules. See *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, FCC 20-155, at 1 (Oct. 27, 2020) (explaining that the Commission is modernizing “the terminology in part 79 of the Commission’s rules to use the more common and widely understood term ‘audio description’ rather than ‘video description.’”).

quarter on channels carrying each of the top five national nonbroadcast networks.² The list of top five national nonbroadcast networks is updated in three year intervals with the third triennial update occurring on July 1, 2021, based on the 2019 to 2020 ratings year.³ On November 2, 2020, the Media Bureau released a Public Notice announcing the top ten national nonbroadcast networks for purposes of the July 2021 update to the audio description requirements.⁴ The Public Notice instructed any program network believing it should be excluded from the list of top five networks for purposes of the audio description rules because it does not air at least 50 hours per quarter of prime-time programming that is not live or near-live must seek an exemption from the list.⁵ Because Fox News meets the requirements for an exemption under the FCC's rules, it submits this instant Request.

Fox News is a 24 hours/day, 7 days/week cable- and satellite- delivered network that reaches approximately 80 million U.S. households. Fox News' programming consists of a blend of news coverage and analysis, opinion commentary, and in-depth reporting featuring a variety of news anchors, correspondents, program hosts, and contributors who appear throughout a given day's programming. The vast majority of Fox News' daily weekday programming (approximately 20 hours per weekday), including its entire prime-time line-up, is live or near

² See 47 C.F.R. 79.3(b)(4) (requiring that 50 hours per calendar quarter be provided in prime time or during children's programming, with the additional 37.5 hours provided at any time between 6 a.m. and 11:59 p.m. local time).

³ In 2018, during the prior update, Fox News received an exemption from the list of top five nonbroadcast networks because the Media Bureau confirmed that Fox News provides fewer than 50 hours per calendar quarter of prime-time programming that is not live or near live. *See Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Order and Public Notice, 33 FCC Rcd 4915, para. 1 (May 17, 2018).

⁴ *Media Bureau Announces National Nonbroadcast Network Ranking for Purposes of July 1, 2021 Update to Audio Description Requirements*, MB Docket No. 11-43, Public Notice, DA 20-1301 (Nov. 2, 2020).

⁵ *Id.*

live, originating from either Fox News' New York headquarters, its studios in Washington, D.C. or Los Angeles, California, or its correspondents around the world.

As reflected in the attached Declaration of Paula Firestone, Vice President of Program Operations at Fox News (attached hereto as Exhibit No. 1), Fox News airs live or near live content from at least 4 a.m. to 11:59 p.m. Monday through Friday. Fox News also airs live or near live programming from at least 6 a.m. to 8 p.m. on Saturdays and from at least 5 a.m. to 2 p.m. on Sundays. Where appropriate to cover breaking news or for other events, Fox News provides additional live coverage. Because its weekday prime-time schedule consists entirely of live or near live programming, and given that live or near live programming makes up a substantial portion of its weekend prime-time schedule, Fox News does not provide an average of at least 50 hours per quarter of non-exempt prime-time programming.

The Fox News programming schedule varies slightly from week to week, but nearly all of its prime-time schedule consists of live or near live programming. Attached as Exhibit No. 2 is a chart that lists the number of hours of non-exempt prime-time programming for October 2019-September 2020.⁶ Attached as Exhibit No. 3 are sample weekday and weekend prime-time schedules that provide a detailed breakdown of Fox News' prime-time programming from this same period. Together these exhibits demonstrate that Fox News does not air, on average, more than 50 hours of non-exempt prime-time programming per quarter. These schedules further show that Fox News presented nearly all live or near live programming during prime time,

⁶ The FCC's rules explain that the top five nonbroadcast networks are calculated as follows: "The first update will be July 1, 2015, based on the ratings for the time period October 2013-September 2014; the second will be July 1, 2018, based on the ratings for the time period October 2016-September 2017; and so on." *See* 47 C.F.R. § 79.3(b)(4). Accordingly, we have provided information regarding non-exempt prime-time programming for October 2019-September 2020 for the July 1, 2021 update.

including weekend prime-time hours. As further detailed in the attached Declaration, the proportion of live and near live programming in the schedules is consistent with other programming periods in which Fox News also did not air at least 50 hours of non-exempt prime-time programming per calendar quarter.

Conclusion

Because Fox news does not provide, on average, at least 50 hours per quarter of prime-time programming that is not live or near live, Fox News should be excluded from the Commission's list of the top five national nonbroadcast networks subject to the Commission's audio description rules.

Respectfully submitted,

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*Counsel for Fox Corporation and
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December 9, 2020


Exhibit 1

DECLARATION

I, Paula Firestone, hereby state as follows:

1. I am Vice President of Program Operations, Fox News Network, LLC ("Fox News").
2. I submit this Declaration in support of the Request of Fox Corporation and Fox News Network, LLC for Exclusion from List of Top Five Nonbroadcast Networks, dated December 9, 2020 in response to the Media Bureau's Public Notice announcing the national nonbroadcast network rankings for purposes of the July 1, 2021 update to the audio description requirements.
3. In my capacity as Vice President of Program Operations, I am familiar with the weekday and weekend programming schedules for Fox News.
4. Fox News distributes a single programming feed to all households in the United States, without regard to time zone. For example, Fox News programming that airs from 8 p.m. to 11 p.m. on the East Coast airs simultaneously from 5 p.m. to 8 p.m. on the West Coast. Similarly, programming that airs live from 6 p.m. to 7 p.m. from the West Coast will air simultaneously from 9 p.m. to 10 p.m. on the East Coast.
5. Fox News airs live or near live programming on weekdays at least from 4 a.m. to 11:59 p.m. Eastern time. Fox News airs live or near live programming on Saturdays at least from 6 a.m. to 8 p.m. Eastern time. Fox News airs live or near live programming on Sundays at least from 5 a.m. to 2 p.m. Eastern time. As circumstances warrant, Fox News may air additional live programming (i.e., for breaking news). Although certain programming changes from time to time, the vast majority of the Fox News prime-time schedule has been comprised of live or near live programming since at least 2011, and Fox News has no current plans to modify the proportion of live/near live programming on its schedule.
6. Exhibit 2 lists the number of hours of non-exempt prime-time programming on a quarterly basis from October 2019-September 2020. Exhibit 3 provides sample programming schedules during the same period, and these schedules are representative of the prime-time programming that Fox News typically airs. The proportion of live/near live programming has not materially changed in subsequent periods.
7. Fox News does not on average air at least 50 hours of nonexempt prime-time programming per quarter.

I declare under penalty of perjury that, to the best of my knowledge, information, and belief, the foregoing is true and correct. Executed December 9, 2020.

A handwritten signature in black ink, appearing to be 'P. Firestone', written over a horizontal line.

Paula Firestone
Vice President of Program Operations
Fox News Network, LLC
1211 Avenue of the Americas
New York, NY 10036

Exhibit 2

Non-Exempt Prime-Time Programming Per Quarter

<i>Quarter</i>	<i>Hours of Non-Exempt Prime-Time Programming</i>
October 1 - December 31, 2019	56 ¹
January 1 - March 31, 2020	45
April 1 - June 30, 2020	41
July 1 - September 30, 2020	46
<i>Average</i>	<i>47</i>

¹ During some holidays, certain programs that would otherwise appear live are instead pre-taped. This may result in a slight increase in the amount of non-exempt prime-time programming, but on average, the programming remains below the 50 hour threshold.

Exhibit 3

Sample line-up from Q4 2019

Week of November 11-17, 2019

Day	Time	Program	Type
Monday (11/11)	8pm	Tucker Carlson Tonight	Live
	9pm	Hannity	Live
	10pm	The Ingraham Angle	Live
Tuesday (11/12)	8pm	Tucker Carlson Tonight	Live
	9pm	Hannity	Live
	10pm	The Ingraham Angle	Live
Wednesday (11/13)	8pm	Tucker Carlson Tonight	Live
	9pm	Hannity	Live
	10pm	The Ingraham Angle	Live
Thursday (11/14)	8pm	Tucker Carlson Tonight	Live
	9pm	Hannity	Live
	10pm	The Ingraham Angle	Live
Friday (11/15)	8pm	Tucker Carlson Tonight	Live
	9pm	Hannity	Near live
	10pm	The Ingraham Angle	Live
Saturday (11/16)	8pm	Watters World	Pre-taped
	9pm	Justice with Judge Jeanine	Live
	10pm	The Greg Gutfeld Show	Pre-taped
Sunday (11/17)	7pm	Fox News Sunday	Near Live
	8pm	Life, Liberty & Levin	Pre-taped
	9pm	The Next Revolution	Live
	10pm	Sam Houston & the Texas Fight for Freedom	Pre-taped
<i>Number of hours toward quarterly total</i>			4

Sample line-up from Q1 2020

Week of February 17-23, 2020

Day	Time	Program	Type
Monday (2/17)	8pm	Tucker Carlson Tonight	Live
	9pm	Hannity	Live
	10pm	The Ingraham Angle	Live
Tuesday (2/18)	8pm	Tucker Carlson Tonight	Live
	9pm	Hannity	Live
	10pm	The Ingraham Angle	Live
Wednesday (2/19)	8pm	Tucker Carlson Tonight	Live
	9pm	Hannity	Live
	10pm	The Ingraham Angle	Live
Thursday (2/20)	8pm	Tucker Carlson Tonight	Live
	9pm	Hannity	Live
	10pm	The Ingraham Angle	Live
Friday (2/21)	8pm	Tucker Carlson Tonight	Live
	9pm	Hannity	Near live
	10pm	The Ingraham Angle	Live
Saturday (2/22)	8pm	Watters World	Live
	9pm	Justice with Judge Jeanine	Live
	10pm	The Greg Gutfeld Show	Pre-taped
Sunday (2/23)	7pm	Fox News Sunday	Near Live
	8pm	Life, Liberty & Levin	Pre-taped
	9pm	The Next Revolution	Live
	10pm	Unknown Valor: A Story of Family, Courage & Service	Pre-taped
<i>Number of hours toward quarterly total</i>			3

Sample line-up from Q2 2020

Week of May 11-17, 2020

Day	Time	Program	Type
Monday (5/11)	8pm	Tucker Carlson Tonight	Live
	9pm	Hannity	Live
	10pm	The Ingraham Angle	Live
Tuesday (5/12)	8pm	Tucker Carlson Tonight	Live
	9pm	Hannity	Live
	10pm	The Ingraham Angle	Live
Wednesday (5/13)	8pm	Tucker Carlson Tonight	Live
	9pm	Hannity	Live
	10pm	The Ingraham Angle	Live
Thursday (5/14)	8pm	Tucker Carlson Tonight	Live
	9pm	Hannity	Live
	10pm	The Ingraham Angle	Live
Friday (5/15)	8pm	Tucker Carlson Tonight	Live
	9pm	Hannity	Near live
	10pm	The Ingraham Angle	Live
Saturday (5/16)	8pm	Watters World	Pre-taped
	9pm	Justice with Judge Jeanine	Live
	10pm	The Greg Gutfeld Show	Pre-taped
Sunday (5/17)	7pm	Fox News Sunday	Near Live
	8pm	Life, Liberty & Levin	Pre-taped
	9pm	The Next Revolution	Live
	10pm	Fox Nation Presents: America vs China	Pre-taped
<i>Number of hours toward quarterly total</i>			4

Sample line-up from Q3 2020

Week of August 17-23, 2020

Day	Time	Program	Type
Monday (8/17)	8pm	Tucker Carlson Tonight	Live
	9pm	Hannity	Live
	10pm	The Ingraham Angle	Live
Tuesday (8/18)	8pm	Tucker Carlson Tonight	Live
	9pm	Hannity	Live
	10pm	The Ingraham Angle	Live
Wednesday (8/19)	8pm	Tucker Carlson Tonight	Live
	9pm	Hannity	Live
	10pm	The Ingraham Angle	Live
Thursday (8/20)	8pm	Tucker Carlson Tonight	Live
	9pm	Hannity	Live
	10pm	The Ingraham Angle	Live
Friday (8/21)	8pm	Tucker Carlson Tonight	Live
	9pm	Hannity	Near live
	10pm	The Ingraham Angle	Live
Saturday (8/22)	8pm	Watters World	Pre-taped
	9pm	Justice with Judge Jeanine	Live
	10pm	The Greg Gutfeld Show	Pre-taped
Sunday (8/23)	7pm	Fox News Sunday	Near Live
	8pm	Life, Liberty & Levin	Pre-taped
	9pm	The Next Revolution	Live
	10pm	Democracy 2020: Convention Kickoff	Live
<i>Number of hours toward quarterly total</i>			3